

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA ex rel.
CHRIS BAASE and DARRYL BARTZ,
and CHRIS BAASE and DARRYL BARTZ,
individually and separately,

Plaintiffs,

v.

Case Number 06-10095-BC
Honorable Thomas L. Ludington

TUSCOLA COUNTY, TUSCOLA BEHAVIORAL
HEALTH SYSTEMS, CASS VALLEY ENTERPRISES,
STEPHAN WOOD PRODUCTS, H & K FASTENER
CORPORATION, ROBERT CHADWICK, ROBERT
LOUKS, PETER LUKES, and SHARON BEALS,

Defendants.

**ORDER ADOPTING IN PART THE MAGISTRATE JUDGE'S REPORT
AND RECOMMENDATION, DISMISSING THE CASE WITH PREJUDICE
AS TO THE RELATORS AND DISMISSING THE CASE
WITHOUT PREJUDICE AS TO THE UNITED STATES OF AMERICA**

On January 6, 2006, the relators Chris Baase and Darryl Bartz filed this *qui tam* action. On July 18, 2006, the United States of America filed a notice that it declined to intervene, in which it also requested service of all pleadings and receipt of all orders of the Court.

On November 7, 2006, the relators' counsel filed an ex parte motion to withdraw and for an extension of time, and this Court subsequently referred pretrial matters to Magistrate Judge Charles E. Binder. On December 19, 2006, the magistrate judge granted in part the motion, as to the withdrawal of counsel, but denied in part, as to the extension of time to accomplish service. On January 3, 2007, the magistrate judge ordered the relators to show cause, on or before January 26, 2007, why the case should not be dismissed for lack of prosecution. On March 2, 2007, the magistrate judge issued a report and recommendation, recommending that the case be dismissed for

lack of prosecution under Federal Rule of Civil Procedure 41(b). The Court is persuaded that the relators have failed to timely prosecute the case and adopts the report of the magistrate judge.

This Court then ordered the United States of America to show cause why this case should not be dismissed for lack of prosecution, because 31 U.S.C. § 3730(b)(1) requires written consent from the Attorney General and the Court for the dismissal of a *qui tam* action.

On April 23, 2007, the United States of America filed its response. It requested that any dismissal for failure to prosecute should issue only as to the relators, so as not to prejudice the United States of America's ability to prosecute this action, should the United States of America subsequently elect to do so.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation [dkt #24] is **ADOPTED IN PART** as to the relators.

It is further **ORDERED** that the case is **DISMISSED WITH PREJUDICE** as to the relators and **DISMISSED WITHOUT PREJUDICE** as to the United States of America.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: April 27, 2007

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein and the United States of America by electronic means or first class U.S. mail on April 27, 2007.

s/Tracy A. Jacobs
TRACY A. JACOBS